

**IN THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Allen VanCleave, *et al.*,

Plaintiffs,

v.

Johns Manville,

Defendant.

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:
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:
:

Case No.:

Judge: _____

NOTICE OF REMOVAL

TO THE JUDGES IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, WESTERN DIVISION:

1. On February 24, 2023, Plaintiffs Allen VanCleave and Decker Truck Line, Inc. commenced an action in the Defiance County Court of Common Pleas, Ohio, bearing Case No. 23-CV-46087 entitled “Allen VanCleave, et al. v. Johns Manville,” praying judgment against Defendant.

2. Plaintiff VanCleave is an individual residing in the State of Iowa and Plaintiff Decker Truck Lines is an Iowa corporation.

3. Defendant Johns Manville is a Delaware corporation with its principal place of business in Denver, Colorado.

4. Said action is wholly of a civil nature of which this Court has original jurisdiction under the provisions of Title 28, United States Code, Section 1332, and is one which may be removed to this Court pursuant to the provisions of Title 28 United States Code Section 1441(a)

and (b), as being a civil action involving a claim or claims over which this Court has original jurisdiction involving citizens of different states and an amount in controversy which exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. A copy of the Summons and Complaint in the case aforesaid was served upon Defendant Johns Manville on February 27, 2023, under and by virtue of Rule 4.3 of the Ohio Rules of Civil Procedure.

6. Defendant attaches hereto, and files herewith, a copy of the Summons and Complaint served as aforesaid, as well as copies of all other process, pleadings and orders served upon them.

WHEREFORE, Defendant prays that the case presently pending in the Defiance County Court of Common Pleas against them be removed to this Court and proceed herein according to law.

Respectfully submitted,

FREEMAN MATHIS & GARY, LLP

/s/ Doug P. Holthus

DOUG HOLTHUS (0037046)

65 East State Street, Suite 2550

Columbus, OH 43215

T: 614-683-8411 | F: 833-330-3669

doug.holthus@fmglaw.com

CERTIFICATE OF SERVICE

A copy of the foregoing was filed electronically and served March 22, 2022, via the court electronic filing system and electronic mail, to the following:

Anthony G. Galasso, Jr.
John D. Kolb
KOLB CLARE & ARNOLD, PSC
9400 Williamsburg Plaza, Suite 200
Louisville, KY 40222
T: 502-617-0002 | F: 844-557-4329
agalasso@kcallegal.com
Counsel for Plaintiffs

/s/Doug Holthus

DOUG HOLTHUS (0037046)

Counsel for Defendant Johns Manville



Notice of Service of Process

null / ALL
Transmittal Number: 26475667
Date Processed: 03/01/2023

Primary Contact: Brian Zall
Johns Manville
717 17th St
Denver, CO 80202-3330

Electronic copy provided to: Becky DeFeo

Entity: Johns Manville
Entity ID Number 0465207

Entity Served: Johns Manville

Title of Action: Allen VanCleave vs. Johns Manville

Matter Name/ID: Allen VanCleave vs. Johns Manville (13715418)

Document(s) Type: Summons/Complaint

Nature of Action: Personal Injury

Court/Agency: Defiance County Court of Common Pleas, OH

Case/Reference No: 23 CV 46087

Jurisdiction Served: Ohio

Date Served on CSC: 02/27/2023

Answer or Appearance Due: 28 Days

Originally Served On: CSC

How Served: Certified Mail

Sender Information: Kolb Clare & Arnold, PSC
502-617-0002

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

Court of Common Pleas Defiance County Ohio

SUMMONS

Rule 4 1070 Ohio Rules of Civil Procedures

Case No. 23-CV-46087

ALLEN VANCLEAVE

VS

JOHNS MANVILLE

SUMMONS

ON
COMPLAINT

To: JOHNS MANVILLE
CORPORATION SERVICE COMPANY
3366 RIVERSIDE DRIVE
SUITE 103
COLUMBUS OH 43221

You are hereby summoned that a complaint (a copy of which is hereto attached and made a part hereof) has been filed against you in this court by the plaintiff(s) named herein.

You are required to serve upon the plaintiff(s) attorney a copy of your answer to the complaint within 28 days after service of this summons upon you, exclusive of the day of service. Said answer must be filed with this court within three days after service on plaintiff's attorney.

The name and address of the plaintiff(s) attorney is as follows:

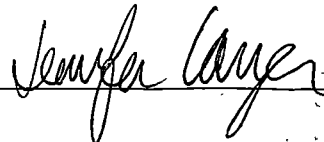
ANTHONY G GALASSO, JR
9400 WILLIAMSBURG PLAZA
SUITE 200
LOUISVILLE KY 40222

If you fail to appear and defend, judgment by default will be taken against you for the relief demanded in the complaint.

Amy M. Galbraith, Clerk

February 24, 2023

by



Deputy

FILED

IN COURT OF COMMON PLEAS

DEFIANCE COUNTY, OHIO

IN THE COURT OF COMMON PLEAS, DEFIANCE COUNTY, OHIO
CIVIL DIVISION

03/24/2023 03:03 PM

AMY M. GALBRAITH, CLERK

ALLEN VANCLEAVE
600 W. 2nd Street
Odebolt, IA 51458

CASE NO.:

23 CV 46087

and

Judge:

DECKER TRUCK LINE, INC.
subrogating for Allen VanCleave
4000 5th Avenue South
Fort Dodge, IA 50501

Plaintiffs,

vs.

COMPLAINTJOHNS MANVILLE
717 17th Street
Denver, CO 80202Serve: Ohio Registered Agent
Corporation Service Company
3366 Riverside Drive, Suite 103
Upper Arlington, OH 43221

Defendant.

NOW COME the Plaintiffs, Allen VanCleave, individually, and Decker Truck Line, Inc., as subrogee for Allen VanCleave, by and through its undersigned counsel, and for its complaint against Defendant, Johns Manville, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Allen VanCleave is an individual residing in the State of Iowa, who at all relevant times was acting within the course and scope of his employer, Plaintiff Decker Truck Lines, Inc.

2. Plaintiff Decker Truck Lines, Inc. is an Iowa Corporation, with its principal place of business located at 4000 5th Avenue South, P.O. 915, Fort Dodge, Iowa.

3. Defendant Johns Manville is a Delaware Corporation registered with the Ohio Secretary of State, which can be served via the Registered Agent for Service of Process listed above.

4. This Court has jurisdiction pursuant to ORC Section 2307.382, as all acts and omissions occurred in Defiance, Ohio.

5. Venue is proper pursuant to Ohio CR 3(C)3, as all acts and omissions alleged herein occurred on property owned and operated by the Defendant Johns Manville in Defiance, Ohio.

FACTS

6. On or about March 3, 2021, Plaintiff, Allen VanCleave, while in the course and scope of his employment as a truck driver for Plaintiff Decker Truck Lines, Inc., picked up a loaded trailer from Defendant's facility, known as Johns Manville, Plant 8, located at 925 Carpenter Road, Defiance, Ohio 43512.

7. Said trailer and the materials making up the load were at all relevant times in the custody and control of Defendant Johns Manville, its agents, employees, and/or assigns prior to the time Plaintiff VanCleave was given custody of said trailer by Defendant Johns Manville, its agents, employees, and/or assigns for delivery to Defendant's customer, Allied Insulation Supply Co. Inc., 1225 West Saint Paul, Milwaukee WI 53233.

8. That Defendant Johns Manville, its agents, employees, and/or assigns were entirely responsible for loading said trailer with the goods owned by Defendant Johns Manville, its agents, employees, and/or assigns at the location in Defiance, Ohio, noted above.

9. That Defendant Johns Manville its agents, employees, and/or assigns negligently and carelessly verified, loaded, and secured the load in the trailer causing serious personal injuries to Plaintiff, Allen VanCleave.

10. That upon opening said trailer at the delivery destination, in a careful and prudent manner consistent with industry standards and practices, the improperly verified, loaded, and secured load dislodged, through no fault of the Plaintiff, Allen VanCleave, the contents of the trailer suddenly and violently fell from the trailer, causing injury to the Plaintiff, Allen VanCleave.

11. That as a result of the acts and omissions of Defendant Johns Manville, its agents, employees, and/or assigns, Plaintiff Decker Truck Line, Inc., became obligated to pay for workers compensation benefits under Iowa law, to Plaintiff, Allen VanCleave.

NEGLIGENCE

12. That the Defendant's actions, or lack thereof, with respect to the hiring, retention, training, contracting, use, and/or establishment of an agency relationship constituted negligence, as well as made it vicariously liable for the acts of their respective agents.

13. That the Defendant knew, or should have known, that its agents, servants, employees, representatives, and/or contractors were required to follow all applicable statutes and regulations with regard to loading trailers for the transport of goods.

14. That the Defendant knew, or should have known, to implement policies and procedures to ensure its agents, employees, servants, representatives, and/or contractors had to follow all applicable statutes and regulations.

15. That the Defendant knew, or should have known, to act reasonably under similar circumstances for the loading, transport, securing, and delivery of goods over the road and across state lines.

16. That the Defendant failed to implement, publish, or otherwise convey policies and procedures to its agents, employees, servants, representatives, and/or contractors.

17. That the Defendant, by and through its agents, employees, servants, and/or representatives, breached its duties.

18. That the negligence, and/or negligence per se, of the Defendants, and/or its agent within the course and scope of agency, servitude, and/or employment, was a substantial factor in causing Plaintiff, Allen VanCleave, to sustain painful and permanent injuries to his body, to incur medical expenses, to lose time and income from his employment, to incur the permanency impairment of his power to labor and earn money, and to incur pain and suffering, both body and mind, from the time of the incident to the present and in the future, all of which is in excess of \$25,000.00.

19. That as result of Defendant, and/or its agent within the course and scope of agency, servitude, and/or employment, negligent actions, Plaintiff Decker Truck Line, Inc. became responsible for and did pay workers compensation benefits to or on behalf of Allen VanCleave in an amount in excess of \$25,000.00, which amount may increase in the future.

WHEREFORE, Plaintiffs demand as follows;

1. Judgment against Defendant Johns Manville in sum which will fairly and reasonably compensate Plaintiff Allen VanCleave for the damages alleged above:

2. Judgment against Defendant Johns Manville in a sum which will fairly and reasonably compensate Plaintiff Decker Truck Line, Inc. for workers compensation benefits extended to or on behalf of Plaintiff Allen VanCleave as a result of the injuries sustained;

3. Pre-judgment and post-judgment interest;

4. Any and all other relief to which Plaintiffs may appear entitled.

Respectfully submitted,

/s Anthony G. Galasso, Jr.

Anthony G. Galasso, Jr. (100433)

John D. Kolb (0081618)

KOLB CLARE & ARNOLD, PSC

9400 Williamsburg Plaza, Suite 200

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Attorney for Plaintiffs

Amy M. Galbraith

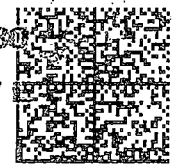
Clerk of Courts, Defiance County
221 Clinton Street
Defiance, Ohio 43512



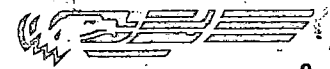
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3366 RIVERSIDE DRIVE
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43221-173428

